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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

A G E N D A

MINUTES

The New Motor Vehicle Board held a General meeting on November 20, 2001, in Hearing Room #1, at the offices of the New Motor Vehicle Board ("Board").

2. **ROLL CALL**

Tom Flesh, President of the Board, called the General meeting to order at 8:20 a.m.

Present:	Wendy Brogin	Tom Novi
	Robert T. (Tom) Flesh	Executive Director
	Frederick E. (Fritz) Hitchcock	Robin P. Parker
	Alan J. Skobin	Senior Staff Counsel
	Solon C. Soteras	
	Glenn E. Stevens	
	David W. Wilson	

Absent: Edward Bayuk

3. **APPROVAL OF THE MINUTES FROM THE SEPTEMBER 6, 2001, GENERAL AND SPECIAL MEETINGS, AND SEPTEMBER 25, 2001, SPECIAL MEETING**

Mr. Skobin moved to adopt the September 6, 2001, General Board meeting minutes. Mr. Stevens seconded the motion. Mr. Wilson abstained from voting because he was not present at the September 6, 2001, General meeting. The motion carried unanimously.

Mr. Stevens moved to adopt the September 6, 2001, Special Board meeting minutes. Mrs. Brogin seconded the motion. Mr. Wilson abstained from voting because he was not present at the September 6, 2001, Special meeting. The motion carried unanimously. Mr. Hitchcock moved to adopt the September 25, 2001, Special Board meeting minutes.

Mr. Soteras seconded the motion. The motion carried unanimously.

4. **PRESENTATION OF RESOLUTION TO SAM W. JENNINGS, FORMER EXECUTIVE SECRETARY/CHIEF ADMINISTRATIVE LAW JUDGE**

Due to health reasons, Sam Jennings, former Chief Administrative Law Judge/Executive Secretary, was not able to accept his Resolution and sculpture. Mr. Flesh read a Resolution into the record, in appreciation for Mr. Jennings dedication and service to the Board. Mr. Hitchcock moved to adopt the Resolution. Mr. Soteras seconded the motion. The motion carried unanimously.

5. **CONSIDERATION OF FORD MOTOR COMPANY'S REQUEST FOR AN EXTENSION OF TIME TO OWN AND OPERATE PENINSULA FORD OF BURLINGAME, INC., IN PREPARATION FOR A SALE TO A SUCCESSOR INDEPENDENT FRANCHISEE IN COMPLIANCE WITH VEHICLE CODE SECTION 11713.3(O)(2)(A)**

The members were provided with a memorandum from Tom Novi and Robin Parker outlining Ford Motor Company's ("Ford") request for an extension of time to own and operate Peninsula Ford of Burlingame, Inc. ("Peninsula"), until February 28, 2002. The dealer members abstained from participation in this matter.

Bryon Bowlby, an employee of Ford, contacted the impacted dealers within the relevant market area and provided a detailed packet of materials to the Board. There were no written responses received by the Board nor were there any impacted dealers present at the meeting. Mr. Bowlby was available to answer member questions.

Mrs. Brogin moved to grant Ford's request for an extension of time to own and operate Peninsula Ford of Burlingame, Inc., in preparation for a sale to a successor independent franchisee until April 30, 2002. Mr. Soteras seconded the motion. The motion carried unanimously with only the Public members voting.

6. **CONSIDERATION OF FORD MOTOR COMPANY'S REQUEST FOR AN EXTENSION OF TIME TO OWN AND OPERATE SOUTH COAST MOTORCARS, INC., DBA STUDIO CITY VOLVO, IN PREPARATION FOR A SALE TO A SUCCESSOR INDEPENDENT FRANCHISEE IN COMPLIANCE WITH VEHICLE CODE SECTION 11713.3(O)(2)(A)**

The members were provided with a memorandum from Tom Novi and Robin Parker outlining Ford Motor Company's ("Ford") request for an extension of time to own and operate Studio City Volvo, until March 30, 2002.

Mr. Skobin, because of his active and direct participation with Galpin Motors, recused himself from participation in this matter and all of the items up to and including agenda item

9. Mr. Skobin was excused from the dias and sat with the audience. Mr. Flesh determined that the dealer members would not participate in this matter. Mrs. Brogin disclosed that she owns a Volvo, resides in the San Fernando Valley, and knows Mr. and Mrs. Boeckmann. However, there is nothing in the relationship with the Boeckmann's or by virtue of having ownership of a Volvo that would prevent Mrs. Brogin from being impartial in these hearings and requested that her comments be extended over the relevant agenda items. Mr. Soteras disclosed that he owns a Honda, and Mr. Stevens owns a Volvo. Messrs. Flesh and Stevens also indicated that there was nothing that would prevent them from being impartial in this hearing.

Bryon Bowlby, an employee of Ford, contacted the impacted dealers within the relevant market area and provided a detailed packet of materials to the Board. There were no written responses received by the Board nor were there any impacted dealers present at the meeting. Mr. Bowlby was available to answer member questions.

Mr. Stevens moved to grant Ford's request for an extension of time to own and operate Studio City Volvo in preparation for a sale to a successor independent franchisee until December 1, 2002. Mrs. Brogin seconded the motion. The motion carried unanimously.

7. **CONSIDERATION OF REQUEST THAT THE BOARD CONSIDER RULING**

CALABASAS MOTORCARS, INC. vs. VOLVO CARS OF NORTH AMERICA, INC.
Protest No. PR-1771-01

Consideration of Volvo Cars of North America's request that the Board consider the Administrative Law Judge's "Ruling on Respondent's Motion to Reject Protest for Lack of Jurisdiction," by the Public members of the Board.

Mr. Flesh reminded the members at their April 27, 2001, General meeting, they adopted a proposal for revisions to the Board's case management procedures. These procedures provided, in part, that non-dispositive jurisdictional motions (for example when a motion to dismiss or reject the protest is denied) are typically not agendized for Board member consideration and proceed to an evidentiary hearing.

Mr. Flesh indicated that it is the Board's practice that when anyone requests that the Board itself consider a matter, that it be agendized for the next regularly scheduled meeting. Respondent, Volvo Cars of North America requests that the Board consider the Administrative Law Judge's Ruling. This ruling is not dispositive and Administrative Law Judge Skrocki referred the matter for an evidentiary hearing.

Mr. Flesh also indicated that the Board has several options available. First, it can adhere to the Board's policy concerning case management procedures and refer the matter to an evidentiary hearing which is currently scheduled for February 4, 2002. Second, it can

waive the Board's policy and hear arguments of counsel on Respondent's request.

Oral arguments were presented before the Public members of the Board. Michael M. Sieving, Law Offices of Michael M. Sieving, represented Protestant. Robert L. Ebe of McCutchen, Doyle, Brown & Enersen represented Respondent.

The Public members of the Board deliberated in open session. Mr. Stevens moved to grant Volvo's request that the Board consider the Administrative Law Judge's Ruling. Mrs. Brogin seconded the motion. The motion carried unanimously.

8. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board shall convene in a closed Executive Session to deliberate on the decisions to be reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

RULING ON MOTION TO REJECT PROTEST (IF THE BOARD GRANTS VOLVO'S REQUEST IN AGENDA ITEM 7)

CALABASAS MOTORCARS, INC. vs. VOLVO CARS OF NORTH AMERICA, INC.
Protest No. PR-1771-01

Consideration of the Administrative Law Judge's "Ruling on Respondent's Motion to Reject Protest for Lack of Jurisdiction," by the Public members of the Board.

Mr. Flesh indicated that Volvo Cars of North America filed a motion to dismiss the protest contending that there is no modification of the Calabasas franchise and that Volvo was exercising its contractual right in regard to the intended appointment of Galpin Jaguar Lincoln Mercury, Inc., as a franchised Volvo dealer.

Oral arguments were presented before the Public members of the Board. Michael M. Sieving, Law Offices of Michael M. Sieving, represented Protestant. Robert L. Ebe of McCutchen, Doyle, Brown & Enersen represented Respondent.

The Public members then convened in Closed Executive Session. Mr. Stevens moved to grant the Motion to Reject Protest for Lack of Jurisdiction and dismiss the protest. Mr. Soteras seconded the motion. The motion carried unanimously.

Mr. Flesh announced the Board's decision in open session and indicated that a written decision would be forthcoming within ten (10) days because of the Thanksgiving holiday.

9. **CONSIDERATION OF MAZDA MOTOR OF AMERICA, INC.'S REQUEST TO EXTEND THE FRANCHISE INCENTIVE AUDIT PERIOD BEYOND EIGHTEEN (18) MONTHS FOR SELMA MAZDA UNDER VEHICLE CODE SECTION 3065.1**

(Mr. Skobin joined the members at the dias.)

Mr. Flesh indicated that Under Vehicle Code section 3065.1, Mazda Motor of America requested that the Board grant it permission to conduct a sales incentive audit of Selma Mazda beginning January 1, 2000, to the present.

Oral arguments were presented before the Public members of the Board. Maurice Sanchez, Alvarado, Smith & Sanchez, represented Mazda Motor of America, Inc. Michael J. Flanagan, Law Offices of Michael J. Flanagan, represented Selma Mazda. Comments by Peter Welch, Director of Government and Legal Affairs, for the California Motor Car Dealers Association were presented concerning the Legislative history.

Mr. Skobin recused himself from participation and discussion of this matter. Mr. Sanchez requested that the dealer members not participate in this matter. Mr. Flesh determined that the other dealer members would not participate in this matter.

Messrs. Hitchcock and Wilson were granted permission by counsel for Mazda to comment.

Mr. Stevens moved to deny Mazda's request without prejudice. Mrs. Brogin seconded the motion. The motion carried unanimously with only the Public members voting.

10. **CONSIDERATION OF WHETHER TO FILE A NOTICE OF APPEAL**

MAZDA MOTOR OF AMERICA, INC. vs. CALIFORNIA NEW MOTOR VEHICLE BOARD; DAVID J. PHILLIPS BUICK PONTIAC, INC., DBA DAVID J. PHILLIPS MAZDA

Sacramento County Superior Court, Case No. 01CS01045

Consideration of whether to file a Notice of Appeal in the above-referenced matter in light of the Sacramento County Superior Court's Judgment Granting Mazda Motor of America, Inc.'s Petition for Writ of Administrative Mandate, Prohibition or Other Appropriate Relief, by the Public members of the Board.

Mr. Flesh indicated that on September 25, 2001, the court issued a ruling granting Mazda's petition for writ of mandate and prohibition. The court determined that "there is no statutory authority permitting the Board to exercise jurisdiction over the matter at issue here: a petition filed by a dealer against a manufacturer/distributor asking the Board to rule that the

latter improperly refused its consent to a transfer of ownership.” The court’s ruling would limit the Board’s petition jurisdiction to consumer vs. licensee matters.

Oral arguments were presented before the Public members of the Board. Maurice Sanchez, Alvarado, Smith & Sanchez, represented Mazda Motor of America, Inc. Chris Scali, Manning, Leaver, Bruder & Berberich, represented David J. Phillips Mazda. Peter Welch, Director of Government and Legal Affairs, for the California Motor Car Dealers Association.

Mrs. Brogin moved to instruct the Office of the Attorney General to file a Notice of Appeal on the Board’s behalf. Mr. Stevens seconded the motion. The motion carried unanimously with only the Public members voting.

11. **FIRST CONSIDERATION OF PETITION PURSUANT TO SECTION 557 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS**

BOB BAKER CADILLAC - CARLSBAD, dba BOB BAKER SUBARU vs. SUBARU OF AMERICA, INC.
Petition No. P-441-01

First consideration by the Public members of the Board pursuant to Title 13, California Code of Regulations, section 554, et seq.

The Public members were sent a copy of the petition via regular mail on November 2, 2001, and had until approximately November 15, 2001 (allowing for mailing), to object to the petition upon first consideration. Given that there were no objections, the Board has referred this matter to an Administrative Law Judge for a Hearing on the issues raised in the Petition.

12. **CONSIDERATION OF REQUEST THAT THE BOARD ORDER SUBARU OF AMERICA, INC., TO IMMEDIATELY ISSUE AN OCCUPATIONAL LICENSING BRANCH FORM NO. OL-124**

BOB BAKER CADILLAC - CARLSBAD, dba BOB BAKER SUBARU vs. SUBARU OF AMERICA, INC.
Petition No. P-441-01

Consideration of Petitioner’s request that the Board issue an order directing Subaru of America, Inc., to immediately provide to Bob Baker Subaru an Occupational Licensing Branch Form No. OL-124 allowing the dealership to temporarily relocate, by the Public members of the Board.

By letter dated November 15, 2001, Protestant’s counsel indicated that this matter has been resolved and requested that it be removed from the agenda.

13. **LUNCH BREAK (12:00 P.M. TO 1:30 P.M.)**

The Board members and staff attended an appreciation luncheon sponsored by Messrs. Flesh and Hitchcock.

14. **STATUS REPORT CONCERNING MANUFACTURER AND DISTRIBUTOR COMPLIANCE WITH THE BOARD'S REQUEST THAT STATUTORILY MANDATED NOTICES, SCHEDULES, OR FORMULAS BE FILED WITH THE BOARD (VEHICLE CODE SECTIONS 3064, 3065, AND 11713.3(O)) - ADMINISTRATION COMMITTEE**

The members were provided with a memorandum from Tom Novi and Robin Parker updating the status of manufacturer compliance with filing statutorily required notices, schedules, or formulas. Ms. Parker reported that 59 manufacturers responded but 32 still had not. The staff was instructed to send letters to the noncomplying licensees indicating that if compliance had not been received by a date certain, they will be directed by the Board to appear and explain why they have not complied. Furthermore, failure to comply and/or failure to appear may result in the Board taking action directing the Department of Motor Vehicles to take action against their occupational license.

15. **STATUS REPORT CONCERNING HOW THE BOARD STAFF CAN IMPROVE MANUFACTURER AND DISTRIBUTOR COMPLIANCE WITH BOARD REQUESTS FOR STATUTORILY REQUIRED INFORMATION - EXECUTIVE COMMITTEE**

The staff will implement the Board's suggestions in Agenda item no. 14. No additional comments were made concerning this matter.

16. **CONSIDERATION OF EMPLOYEE RECOGNITION AWARD RECIPIENT AS SELECTED BY THE BOARD DEVELOPMENT COMMITTEE**

The Board Development Committee nominated Kathy Tomono and Jackie Grassinger, to receive the Employee Recognition Awards. Jackie was recognized for her outstanding customer service, including being able to find translators for non-English speaking customers, handling extra calls while other staff is unavailable, and going the extra mile in researching complex issues. Jackie's success in mediating disputes has been profiled in *The In-Site*. Mr. Wilson moved to adopt the Committee's recommendation. Mr. Soteris seconded the motion. The motion carried unanimously. Mr. Wilson presented Jackie with a Certificate of Achievement for being chosen as the Employee Recognition Award Recipient, her name will be placed on a perpetual plaque, and she will receive a \$500.00 check.

Kathy was recognized for her outstanding performance in preparing materials for Board meetings, preparing *The In-Site* quarterly newsletter, processing the broad range of documents relating to Board cases. Kathy has been praised by her co-workers for her energy, positive attitude, and willingness to work long hours to get the job done. Mrs. Brogin moved to adopt the Committee's recommendation. Mr. Hitchcock seconded the motion. The motion carried unanimously. Mr. Soteras presented Kathy with a Certificate of Achievement for being chosen as the Employee Recognition Award Recipient, her name will be placed on a perpetual plaque, and she will receive a \$500.00 check.

17. **STATUS REPORT CONCERNING THE BOARD'S FINANCIAL CONDITION THROUGH THE 1ST QUARTER OF FISCAL YEAR 2001-2002 - FISCAL COMMITTEE**

The members were provided with a memorandum from Tom Novi and Dawn Kindel. Mr. Novi reported that the 1st and 2nd quarter financial reports will be delayed until the March 2002, General meeting, because of new financial system software the Department of Motor Vehicles is implementing.

18. **CONSIDERATION OF NEW MOTOR VEHICLE BOARD DISPUTE RESOLUTION GUIDE FOR ADMINISTRATIVE LAW JUDGES AND OTHERS WHICH MAY BE USED IN PREPARING ORDERS, PROPOSED DECISIONS/RULINGS, CASE SUMMARIES, AND THE LIKE - POLICY AND PROCEDURE COMMITTEE**

The members were provided with an amended *Guide* that reflects the acknowledgment page being removed. Mr. Skobin suggested that the disclaimer statement at the bottom of the introduction be deleted. Additionally, Mr. Skobin noted a few technical corrections and requested that this matter be considered at the January 2002, meeting.

19. **CONSIDERATION OF REVISED TEXT OF PROPOSED RULEMAKING CONCERNING THE BOARD'S CONFLICT OF INTEREST CODE - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a copy of revised text of proposed rulemaking. Ms. Parker indicated that based on feedback provided by the Fair Political Practices Commission, the text has been amended to reflect one disclosure category and to address the issue of consultants. Mr. Skobin moved to adopt the revised text. Mr. Soteras seconded the motion. The motion carried unanimously.

20. **DISCUSSION CONCERNING LEGISLATION - POLICY AND PROCEDURE COMMITTEE**

- a. Legislation that impacts the Board.
Senate Bill 734 - Chaptered October 5, 2001.
- b. Pending Legislation that impacts the Board.
 - (1) Senate Bill 774.
 - (2) House of Representatives Bill 1296.
- c. Legislation of general interest.
Senate Bill 481 - Chaptered October 3, 2001.
- d. Pending Legislation of general interest.
Senate Bill 91.

The members were provided with a memorandum from Tom Novi and Robin Parker summarizing the legislation that impacts the Board and bills of general interest. The summary analyzed the current law, the legislation, and the impact on the Board. Ms. Parker informed the members that Senate Bill 734 (Senator Karnette), sponsored by the Department of Motor Vehicles ("Department"), impacts several definitions within the Board's jurisdiction. According to legal staff from the Department, it was not intended that trailer manufacturers and distributors be placed within the Board's jurisdiction, nor do they believe this legislation does so. However, staff indicated this would likely be clarified in legislation next year.

21. **ANNUAL REPORT OF BOARD AND STAFF PARTICIPATION IN THE 2001 UNITED CALIFORNIA STATE EMPLOYEES CAMPAIGN**

The members were provided with a memorandum from Tom Novi and Kathy Tomono concerning the Board's participation in the United California State Employees Campaign (UCSEC). Mr. Novi reported that due to the efforts of the Board and staff, the Board's contributions were increased from \$855.00 to \$1,555.81, a 55% improvement over last year's campaign.

22. **SELECTION OF BOARD MEETING DATES FOR 2002**

The members were provided with a memorandum from Tom Novi and Robin Parker concerning upcoming Board meeting dates. Meetings are tentatively scheduled as follows: (1) January 8, 2002, General meeting, Los Angeles; (2) March 12, 2002, General meeting, Sacramento; (3) April 26, 2002, General meeting, Indian Wells; and, (4) May 14, 2002, General meeting, Sacramento.

23. **EXECUTIVE DIRECTOR'S REPORT**

- a. Administrative Matters.
- b. Status of Protests.
- c. Status of Petitions.
- d. Status of Appeals.
- e. Judicial Review.
- f. Notices Filed Pursuant to Vehicle Code Sections 3060 and 3062.
- g. Other.

Mr. Novi provided the members with a Report on Administrative Matters which identified all pending projects, the Board manager and committee assigned, estimated completion date, and status.

The members were also provided with a copy of the Executive Director's Report.

Mr. Stevens requested that when the General Counsel is appointed, that the Board's statutes be reviewed in consultation with representatives from the industry, with the goal of simplifying the statutes, including consolidation of protests and petitions into one category of action. The staff will report to the Board at the March 2002, meeting, concerning the status of this project.

24. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(a)(1), the Board shall convene in a closed Executive Session.

a. **ANNUAL PERFORMANCE REVIEW OF SENIOR MANAGEMENT STAFF - EXECUTIVE COMMITTEE**

The Board determined that the Executive Director, Tom Novi, would receive the maximum pay raise of 10%.

b. **CONSIDERATION OF THE GENERAL COUNSEL NOMINEE - EXECUTIVE COMMITTEE**

The selection of the General Counsel was postponed pending review and exemption from the hiring freeze.

25. **OPEN SESSION**

The Board returned to Open Session to adjourn the meeting.

26. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at 2:38 p.m.

Submitted by

Signature on File

TOM NOVI
Executive Director

Signature on File

APPROVED: _____
Robert T. (Tom) Flesh
President
New Motor Vehicle Board